

AMENDED IN SENATE MARCH 28, 2006

**SENATE BILL**

**No. 1820**

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**Introduced by Senator Battin**

February 24, 2006

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An act to amend Section 3030 of the Family Code, *and to add Section 294.5 to the Penal Code*, relating to child custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1820, as amended, Battin. Custody and visitation: sex offenders.

(1) Existing law prohibits a court from granting custody of, or unsupervised visitation with, a child to a registered sex offender if the victim was a minor, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

This bill would ~~make technical changes to that provision~~ provide that other credible evidence of sexual abuse by a registered sex offender, as specified, would constitute evidence that a child is at significant risk, and would require the court to consider that evidence for purposes of granting or denying custody or visitation with that registered sex offender.

(2) Existing law requires persons convicted of specified sex offenses to register with local law enforcement, so long as they reside in California.

This bill would require the court in which a person has been convicted of a sex offense against a minor to inform that person that his or her conviction may result in the loss of custody of, or visitation with, his or her child or children, if any.

(3) This bill would provide that its provisions apply prospectively only.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3030 of the Family Code is amended to  
2 read:

3 3030. (a) (1) No person shall be granted physical or legal  
4 custody of, or unsupervised visitation with, a child if the person  
5 is required to be registered as a sex offender pursuant to Section  
6 290 of the Penal Code if the victim was a minor, or if the person  
7 has been convicted under Section 273a, 273d, or 647.6 of the  
8 Penal Code, unless the court finds that there is no significant risk  
9 to the child and states its reasons in writing or on the record.

10 (2) No person shall be granted physical or legal custody of, or  
11 unsupervised visitation with, a child if anyone residing in the  
12 person's household is required, as a result of a felony conviction  
13 in which the victim was a minor, to register as a sex offender  
14 under Section 290 of the Penal Code, unless the court finds there  
15 is no significant risk to the child and states its reasons in writing  
16 or on the record.

17 (3) (A) The fact that a child is permitted unsupervised contact  
18 with a person who is required, as a result of a felony conviction  
19 in which the victim was a minor, to be registered as a sex  
20 offender under Section 290 of the Penal Code, shall be prima  
21 facie evidence that the child is at significant risk. When making a  
22 determination regarding significant risk to the child, the prima  
23 facie evidence shall constitute a presumption affecting the burden  
24 of producing evidence. However, this presumption shall not  
25 apply if there are factors mitigating against its application,  
26 including whether the party seeking custody or visitation is also  
27 required, as the result of a felony conviction in which the victim  
28 was a minor, to register as a sex offender under Section 290 of  
29 the Penal Code.

30 (B) *Other credible evidence of sexual abuse, as defined in*  
31 *Section 11165.1 of the Penal Code, by a person described in this*  
32 *section, shall also constitute evidence that the child is at*  
33 *significant risk, if supported by an agency report, a medical*  
34 *examination, or testimony from the victim or a neutral expert,*

1 *and shall be considered by the court in determining custody or*  
2 *visitation pursuant to this section.*

3 (b) No person shall be granted custody of, or visitation with, a  
4 child if the person has been convicted under Section 261 of the  
5 Penal Code and the child was conceived as a result of that  
6 violation.

7 (c) No person shall be granted custody of, or unsupervised  
8 visitation with, a child if the person has been convicted of murder  
9 in the first degree, as defined in Section 189 of the Penal Code,  
10 and the victim of the murder was the other parent of the child  
11 who is the subject of the order, unless the court finds that there is  
12 no risk to the child's health, safety, and welfare, and states the  
13 reasons for its finding in writing or on the record. In making its  
14 finding, the court may consider, among other things, the  
15 following:

16 (1) The wishes of the child, if the child is of sufficient age and  
17 capacity to reason so as to form an intelligent preference.

18 (2) Credible evidence that the convicted parent was a victim of  
19 abuse, as defined in Section 6203, committed by the deceased  
20 parent. That evidence may include, but is not limited to, written  
21 reports by law enforcement agencies, child protective services or  
22 other social welfare agencies, courts, medical facilities, or other  
23 public agencies or private nonprofit organizations providing  
24 services to victims of domestic abuse.

25 (3) Testimony of an expert witness, qualified under Section  
26 1107 of the Evidence Code, that the convicted parent experiences  
27 intimate partner battering.

28 Unless and until a custody or visitation order is issued pursuant  
29 to this subdivision, no person shall permit or cause the child to  
30 visit or remain in the custody of the convicted parent without the  
31 consent of the child's custodian or legal guardian.

32 (d) The court may order child support that is to be paid by a  
33 person subject to subdivision (a), (b), or (c) to be paid through  
34 the local child support agency, as authorized by Section 4573 of  
35 the Family Code and Division 17 (commencing with Section  
36 17000) of this code.

37 (e) The court shall not disclose, or cause to be disclosed, the  
38 custodial parent's place of residence, place of employment, or the  
39 child's school, unless the court finds that the disclosure would be  
40 in the best interest of the child.

1     *SEC. 2. Section 294.5 is added to the Penal Code, to read:*

2     *294.5. Any person who is required to be registered as a sex*  
3 *offender under Section 290 where the victim was a minor, or*  
4 *convicted under Section 273a, 273d, or 647.6, shall be informed*  
5 *in open court by the court in which the person has been*  
6 *convicted that his or her conviction may result in the loss of*  
7 *custody of, or unsupervised visitation or visitation rights with, his*  
8 *or her child or children, if any, as described in Section 3030 of*  
9 *the Family Code.*

10    *SEC. 3. The provisions of this act shall apply prospectively*  
11 *only.*